

**SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

RENARD TRUMAN POLK,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 50147
District Court Case No. C166490

RECEIPT FOR DOCUMENTS

TO: Renard Truman Polk #72439
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

09/10/07 Filing Fee Waived: Criminal.

09/10/07 Filed Proper Person Petition for Writ.
Motion to Vacate, Set Aside, Correct or Relieve an Illegal Sentence or Judgment.

DATE: September 10, 2007

Janette M. Bloom, Clerk of Court

By:  _____
Deputy Clerk

REWARD T. Polk #72439
L.C.C. P.O. Box 359
LoveLock, Nevada 89419
Movant In Pro Se

FILED

SEP 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY G. Alvarado
DEPUTY CLERK

In The Supreme Court of the State of Nevada

* * * *

REWARD T. Polk
~Movant~

Case No. _____
Docket No. 50147

- vs -

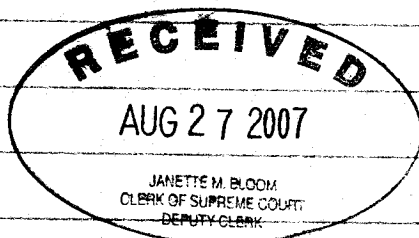
The State of Nevada
~Respondent~

Return filed
Stamp copy

Motion TO Vacate, Set Aside, Correct
or Relieve an Illegal Sentence or Judgment.

Movant
REWARD T. Polk
L.C.C. P.O. Box 359
LoveLock, Nevada 89419
In Pro-Se

Respondent
Nevada Attorney General
100 North Carson St
Carson City, NV 89701



07-19959

REWARD T. Polk #72439
L.C.C. P.O. Box 359
Lovelock, Nevada 89419
Movant In Pro Se

In The Supreme Court of the State of Nevada
* * * * *

REWARD TRUMAN Polk
~Movant~

Case No: _____
Docket No: _____

-vs-

The State of Nevada
~Respondent~

Motion for Vacating, setting Aside, Relief
From or Correcting an Illegal Sentence or Judgment.

Date of Hearing: _____
Time of Hearing: _____

Comes, Now, the Movant in his proper person,
REWARD T. Polk, and hereby files this Motion
to vacate, set aside or correct an illegal sentence or
judgment pursuant to U.R.S. 176.355 and U.R.S.
34.724.

This Motion is made and based upon all papers, pleadings
and documents on file herein; and the order and judgment

entered on January 25, 2005.

The judgment and order in relevant part to the forthcoming motion held:

"the independent claims apart from trial or direct appellate's counsel ineffectiveness will not be addressed due to the fact [Movant] failed to raise the claims on direct appeal and are therefore waived pursuant to N.R.S. 34.810 (5) (2)."

This motion is further based on the facts, points and authorities incorporated herein.

Dated this 23rd day of August 2002

151. Rd Polk

Statement of Facts

On July 25, 2001 the petitioner/[Movant] filed a Pre-Trial Writ of Habeas Corpus with the trial court through counsel of record asserting his detention was illegal because: 1.) the juvenile court did not properly certify the petitioner/[Movant] for adult court proceedings 2.) the (11) eleven month delay in filing charges prejudiced the petitioners/[Movant] right to a fair trial 3.) the cumulative effect

of the errors committed by the State prejudiced the petitioner's/[Movant] right to a fair trial. 4.) the petitioner was be detained in violation of the Double Jeopardy. 5.) the petitioner's/[Movant] statement was illegally obtained or involuntary.

The Movant also requested that an evidentiary hearing be held.

On August 8, 2001 the trial court denied the pre-trial petition.

On December 18, 2001 the Movant filed an original jurisdiction writ of habeas corpus with the Nevada Supreme Court, docket number , again citing the above stated grounds and requesting an evidentiary hearing as well challenging the legality of his detention.

On January 23, 2002 the Supreme Court of Nevada denied the petition on the merits holding the petitioner/[Movant] was not entitled to relief.

En Banc Reconsideration was denied on April 3, 2002.

The Movant was convicted on January 10, 2002.

On September 11, 2002 the Movant through appellate counsel filed his direct-appeal opening brief.

On August 25, 2003 the Nevada Supreme Court filed its opinion affirming the Movant's conviction.

However On December 6, 2002 the Movant submitted a Motion to Compel Specific Performance, Release Pending Appeal and Judicial Notice alerting the Nevada Supreme Court appellate counsel was excluding issues preserved by the movant in the pre-trial writ of habeas corpus and the original jurisdiction writ of habeas corpus from the appeal in contravention of the Movant's wishes, docket number 39457.

On April 1, 2003 the motion was denied premised on the opinion of judge Maupin, "that the motion would not be filed because Movant was represented by counsel."

On July 1, 2004 the Movant filed a proper person Petition for Writ of Habeas Corpus. Requesting an evidentiary hearing be held to substantiate the claims enumerated therein.

Again the Movant cited as grounds the claims pressed in the pre-trial writ of habeas corpus and the original jurisdiction writ.

The trial court denied the petition on September 14, 2004 finding and concluding the claims to be barred by "Law of the Case," as they were decided

on direct appeal.

A timely notice of appeal was filed and appeal taken.

On January 25, 2005 the Nevada Supreme Court Sue Sponte or without having the district attorney respond decided the appeal after the Movant submitted his opening brief concluding that, "the independent claims (i.e. those presented in the pre-trial writ and the original jurisdiction writ) were procedurally barred or waived because Movant failed to present them on direct appeal pursuant to N.R.S. 34.810(b)(2)."

The remittitur was issued on February 22, 2005.

Points and Authorities

This court has authority to hear this Motion pursuant N.R.S. 176.555 and 34.724: "the appropriate vehicle for challenging facially illegal sentence at any time under a statute or rule of the court is by motion to vacate, set aside or correct sentence or judgment." [paraphrased] Edwards v. State 918 P.2d 321; In Re Marriage of Baltins 212 C.Ca.3d 66 and Wilson v. Huckle 724 P.2d 1069

This court has authority to vacate set aside or open if an aggrieved party is adversely affected thereby this includes material and substantial irregularity which has not been cured or waived this includes jurisdictional

defects. Van Nort v. Davis 800 P.2d 1082

Argument.

(I.) The Judgment of this court is void because the Nevada Supreme Court lacked subject-matter jurisdiction to determine a question of fact on an appeal from a post-conviction writ of habeas corpus.

"In order for a judgment to be valid the court must have jurisdiction of the question which it assumes to decide." Riley v. State 506 N.W. 2nd 45; Connelly v. Castillo 637 P.2d 1092.

"Judgments of Courts outside limits constitutional or statutory provisions DEFINING subject matter jurisdiction is void" Pain, Webber, Curtis Inc v. Adams 718 P.2d 508.

The Nevada Supreme Court has continuously asserted in Pelligrini v. State 34 P.3d 519; Hosier v. State 193 P.3d 212 and Daniel v. State 688 P.2d 315, @ 316

"[the] Nevada Supreme Court does not determine or decide questions of facts only LAW." [emphasis]

When the Nevada Supreme Court decided a question of fact determined by the trial court they acted outside of their prescribed jurisdiction rendering the judgment void.

The trial court had already found and concluded that the issues and claims presented in the petition were decided by the Nevada Supreme Court and would not be revisited.

On appeal from the denial of the post-conviction writ of habeas corpus the only questions to be determined pertaining to the independent claims were 1.) whether the movant was entitled to an evidentiary hearing or 2.) were the claims barred by law of the case.

By the Nevada Supreme Court expanding their jurisdiction over subject-matter to include questions of fact ousted the trial court of its original jurisdiction to issue writs.

Furthermore judgments must be responsive to the pleadings and issues and judgments beyond are void. *Watkins v. Wilson* 877 P.2d 19.

Issues not submitted to the court are void. In Re Custody of C.S.E. 755 P.2d 578.

II.) The judgment of the trial court is void because direct appeal proceedings cannot oust original collateral attack proceedings, nor can any statute convey such authority.

Direct attack on a criminal conviction is a further step in the criminal proceedings.

Collateral attack proceedings constitute a new separate and original action which seeks to assert new facts, evidence and arguments.

By the trial court holding that the issues or claims presented were barred by law of the case is akin to saying new evidence or facts can never be presented in an original proceeding.

Any determination on direct appeal outside the scope of errors whether pre-trial, trial and sentencing were completely with-held from the jurisdiction of the Nevada Supreme Court and placed squarely within the trial court.

The Nevada Supreme Court cannot extend or confer direct attack criminal proceedings to include original actions, which constitute two separate and distinct subject-matters.

"A judgment is wholly void in cases where the subject-matter is with-held from the jurisdiction of the court or exclusively placed in another." Woods Bros Corp v. Yankton County 54 E.2d 304.

III.) The judgment of the Nevada Supreme Court is void because the process by which a waiver is obtained is fundamental defective or flawed.

The necessity that a waiver be valid and have effect the interested party must be given fair notice and opportunity to be heard.

Each element must be met before constitutional rights can be waived in order to meet the standard of due process. If either is not met the judgment is void. Wheller v. Moore 38 P. 1053;

Wize v. Herzog 114 F.2d 486:
"for want of jurisdiction."

Accordingly a high standard of proof is required to establish a valid waiver. Virginia v. State of New York 86 S.Ct. 1602 and a waiver is not to be presumed Reeves v. Mabe 615 F.2d 489.

The movant argues that the way in which the waiver is obtained under N.R.S. 34.810(b)(a) is defective.

A judgment is void where it is based on a process which is so radically defective or fundamental flawed as to be equivalent to no process. Richardson v. Webb 135 S.W.2d 861.

When the movant filed the motion to compel specific performance, release pending appeal and judicial notice this was an outright attempt to preserve the asserted claims (i.e. those in the pre-trial writ and the original jurisdiction writ.)

By the judge perpetuating a policy that disallows the movant from supplementing the direct appeal is a denial of due process and access to the courts. misconduct of judge is grounds to vacate and open judgment. Newton v. Joslin 30 F. 891.

Since the movant retains the right to supplement or present pro-se motions on direct appeal. Myers v. Collins 8 F.3d 249 (5th Cir. 1993).

Judgment entered in a proceeding failing to comply with procedural due process are void. Bethany Medical Center v. Nazanzie 847 P.2d 1341 see also 890 P.2d 349

Furthermore these claims were outside of the Nevada Supreme Courts jurisdiction to determine since all the claims submitted were mixed questions of law and fact which the Nevada Supreme Court does not and cannot decide. see, supra Riley and Connelly argument (I.)

Therefore this defective process by which a waiver is obtained under N.R.S. 34.810(6)(2) is insufficient to constitute a valid waiver.

This is a fundamental defect which lies at the base of the Nevada institution and is a complete manifest injustice. Hammon v. Manser 992 P.2d 311; Hammon, supra 833 P.2d 900 see also.

IV.) Conclusion

For the set forth herein, this Court should vacate set aside, correct or relieve the Movant from the judgment rendered on _____ on appeal from the denial of the post-conviction writ of habeas corpus and decide the issues presented

- 1.) Whether the Movant is entitled to an evidentiary hearing
- 2.) Whether the Movant has demonstrated the requisite cause and prejudice to overcome

3.) Whether a Writ should issue which is well within these prescribed jurisdiction to determine as the order or judgment or sentence entered is void for: want, lack, loot or unauthorized exercise of jurisdiction.

Dated this 23rd day of August 2007.

Respectfully Submitted:

151. Bd Polk

BENARD T. POLK #12439

L.C.C. P.O. Box 359

Loce Lock, Nevada 89419

Certificate of Service by Mail

I BENARD POLK do hereby certify under the penalty of perjury pursuant to N.R.S. 208.165 that on the 23rd day of August 2007 a true and correct copy was handed to prison officials to be mailed to the following addresses:

Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

Nevada Supreme Court

151. Bd Polk

BENARD T. POLK

To: Jack Palmer, warden ; George Chanos, Nevada
Attorney General, The State of Nevada.

Each and all of you will please take notice that the
Movant _____ will come on hearing before
the Nevada Supreme Court pursuant to a Motion
to Vacate, Relieve, Correct or Set Aside an Illegal
Sentence on the _____ day of _____
2007, at the hour of _____ a.m. in

Dated this _____ day of _____ 2007.

151

BERNARD T. POIK #72439
L.L.C. P.O. Box 359
Love Lock, Nevada 89419